

Remarks

In the final office action, the Examiner rejected claims 1 and 46 as indicated by the Office Action summary. However, as pointed out in Applicant's previous response, claims 1-28 were cancelled by a previous amendment. Therefore, it is unclear how to interpret the Examiner's rejection since claim 1 is no longer pending. Since the Examiner does not discuss claim 29, the only other pending independent claim, we have based our response on the assumption that the discussion of claim 1 was intended to refer to claim 29.

Furthermore, as indicated in our previous response, the Office Action Summary still indicates that claims 2-45 and 47-51 are objected to. Since no explanation of the objection is mentioned in the Office Action we are not clear on the grounds for objection and assume this was an error in the Office Action Summary. We respectfully request that the Examiner respond to and clarify these outstanding clerical issues.

The Examiner rejected claims 29 and 46 under 35 U.S.C. 102(e) as being anticipated by Zhong, U.S. Pat. No. 6,468,649. Applicants respectfully contend that Zhong does not anticipate claims 29 or 46. "A claim is anticipated *only if each and every* element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference" *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) emphasis added.

Zhong discloses a hydrophilic coating for a medical device. The coating includes a polyfunctional crosslinking agent with functional groups that react with organic acid groups. Zhong does not disclose a self-assembling monolayer covalently adjoined to a

surface and does not disclose latent reactive groups. Because Zhong fails to teach all of the elements of the claims, Zhong does not anticipate claims 29 or 46.

The Examiner also rejected claims 29 and 46 under 35 U.S.C. 102(e) or (b) as being anticipated by Noble et al. "Biomaterials Tutorial: Drug Delivery Systems". The Examiner cites this tutorial posted on the University of Washington website as a basis for a rejection under 102(e) or (b). This rejection is improper because the cited tutorial posted on the internet is not proper 102(b) art. Section 2128 of the MPEP relates to internet postings and states that "[i]f the publication does not include a publication date (or retrieval date), it cannot be relied upon as prior art under 35 U.S.C. 102(a) or (b)". The Examiner does not provide proof regarding the date that this tutorial was publicly posted. In fact, this publication does not include such a post date. Rather, the only date indicated is the 12/07/05 date, which appears to be the date the Examiner printed the material. Therefore, the online tutorial is not valid 102 prior art.

Furthermore, even if the posting was proper prior art, the rejection is still improper because the posting does not disclose each element of the rejected claims. "A claim is anticipated *only* if *each and every* element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference" *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) emphasis added. The online posting cited by the Examiner fails to set forth all of the limitations of the claims. The tutorial does not even mention self assembling monolayers let alone the covalent attachment of such monolayers to a surface. In fact, the reference is quite irrelevant to the invention of the present application.

The Examiner rejected claims 29 and 46 under 35 U.S.C. 102(e) or (b) citing “Microfabricated Microneedles for Gene and Drug Delivery”, McAllister et al. and “A controlled-release microchip”, Santini et al. Applicants respectfully contend that this rejection is improper because the cited abstracts do not disclose each element of the claims as required. “A claim is anticipated *only* if *each and every* element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference” *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) emphasis added. In fact, these abstracts do not disclose *any* limitations of the rejected claims. For example, the abstracts do not disclose a coated medical device including a self assembling monolayer adjoined to one or more surfaces. Furthermore, the abstracts do not teach or even suggest covalently adjoining a self assembling monolayer to a surface using latent reactive groups. In fact, the references are quite irrelevant to the invention of the present application.

The Examiner rejected claims 29 and 46 under 35 U.S.C. 102(e) as being anticipated by LaVan, DA, McGuire T, Langer R. “Small-scale systems for in vivo drug delivery”. The rejection is improper for two reasons. First, this reference is not prior art because it was published on September 30, 2003, which is after the priority date, July 17, 2001, of the present application. Second, this abstract is not proper 102(e) prior art since it is not a U.S. patent, a U.S. patent application publication or a WIPO publication of an international application under PCT article 21(2). See 35 U.S.C. §102(e).

Furthermore, even if the reference was prior art the rejection would still be improper because it does not disclose each element of the rejected claims. “A claim is anticipated *only* if *each and every* element as set forth in the claim is found, either

expressly or inherently described, in a single prior art reference” *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) emphasis added. The abstract fails to set forth any, let alone all of the limitations of the rejected claims. For example, the abstract does not even suggest a coated medical device including a self assembling monolayer adjoined to one or more surfaces. Furthermore, the abstract does not teach or even suggest covalently adjoining a self assembling monolayer to a surface using latent reactive groups. In fact, the reference is quite irrelevant to the invention of the present application.

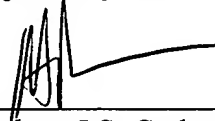
Given the inappropriateness of the art cited, the Applicants believe that the Examiner’s final action was improper. Moreover, the failure of each and every reference to meet the statutory requirements for anticipation compels the Examiner to allow each of the pending claims.

In view of the foregoing, it is submitted that each of the pending claims are in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

If the Examiner feels that prosecution of the present application can be materially advanced by a telephonic interview, the undersigned would welcome a call at the number listed below.

Respectfully submitted,

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